

As to the Rathdrum facility, the record indicates that the Agency has already commenced clean-up of that location and has obtained the pledge of the owner, Mr. Bingham, to help in that endeavor. The Drexlers are apparently in no position to assist in that effort. As to the Tacoma facility, it apparently imposes no immediate environmental risk and closure thereof would probably constitute the pumping out of underground storage tanks and a rinsing thereof, all of which would probably not cost a great deal of money. In any event, it is unlikely that the Drexlers are in a position to effectuate that clean-up, although the record in that regard is unclear since a discussion of the costs incident to such a clean-up were never presented.

Although the draft policy which was utilized by the Agency to calculate the proposed penalties in this case is the one which is apparently applicable to this case, one can not ignore the Final Agency Penalty Policy which was promulgated subsequent to the issuance of the two Complaints in this case but prior to the Hearing and this Decision. It occurs to me that under the strange and unique circumstances present here, the language and spirit of the Final Penalty Policy, to the extent it is deemed appropriate, should apply.

My decision as to the Respondents, Rich Cragle and Ron Inman, owners of the C Street property in Tacoma, has already been set forth above. It is true, as the Agency points out in its brief, that the congressional discussion associated with this Bill indicates that it was Congress' intent to impose liability on owners who are not also the operators of RCRA facilities. I do not believe, however, that it intended the result herein urged by the Agency. It is quite easy to conceive a situation where a parcel of real estate is owned by an individual who enters into a

long-term lease with a corporation who builds a substantial RCRA facility and in turn then hires a third corporation to operate the facility on its behalf. In that instance, it would seem to me that the language urged by the Agency would make both the primary lessee of the premises who owned and built the facility in question, as well as the corporation which it hired to operate the facility would both be liable under RCRA, but that absent some unusual circumstance the owner of the bare real estate would not be liable under RCRA for penalties such as proposed here. Agency policy apparently requires the signature of the owner of the facility on the Part A and B applications as a means of notifying him that he is in some way liable under RCRA for what ultimately might happen on his property. Just how the signing of an application for a Part A or Part B permit somehow advises a land owner of the potential for vicarious liability certainly escapes me. In any event, I find no reason to alter my decision that the land owners, Cragle and Inman, are not liable for the payment of any civil penalty in these proceedings.

In accordance with the above discussion, I am of the opinion that a civil penalty as to the Tacoma facility in the amount of \$3,000.00 should be assessed against Arrocom, Inc., Drexler Enterprises, Inc., George Drexler, Terry Drexler, Inc., and Terry Drexler as an individual, jointly and severally.

As to the Rathdrum facility, under the circumstances in this case I find that a civil penalty in the amount of \$4,500.00 is appropriate against Arrocom, Inc., Drexler Enterprises, Inc., and George W. Drexler and Thomas Drexler, individually, with joint and several liability among these corporate and individual Respondents. As to Respondent, W. A. (Alan) Pickett, his involvement in this matter is unclear and as indicated

in the record he did not appear at the Hearing either in person or through counsel. Apparently, Mr. Pickett was the former owner of the Rathdrum facility and sold it to the Drexlers in the 70s and continued to function as an employee of the operators of the facility up until the time the Drexlers and their corporation were evicted from the premises by Mr. Bingham. The record is not clear as to exactly what the relationship was between Mr. Pickett and the Drexlers although there was testimony to the effect that he had some form of employment contract with the Drexlers following his sale of the facility to them. A copy of this employment contract was not available for the record and consequently no one knows what it contained. Mr. George Drexler testified that, as to Arroom corporation, Mr. Pickett held no office but was rather an employee. There is testimony that suggests that Drexler Enterprises, one of George Drexler's other corporations, which was in some fashion dissolved by the IRS, Mr. Pickett was the secretary of that corporation and that he apparently felt that he had some authority to function as an officer in regard to Arroom corporation, when in fact he held no office with said corporation. It is true that Mr. Pickett signed the Part A application both as operator and owner of Arroom, Inc. but apparently such signature on behalf of Arroom was just as improper as his signature as that of the owner of the facility. Given the rather imprecise testimony of Mr. George Drexler relative to his association with Mr. Pickett and Mr. Pickett's authority and position with Arroom, Inc., it is difficult to determine whether or not Mr. Pickett should be assessed a penalty in this matter as one of the operators of the facility in question at the Rathdrum site. He apparently had wide latitude to operate the Rathdrum facility on the behalf of the Drexlers and their corporations and inas-

much as he signed the applications in two capacities, it occurs to me that he should be included as one of the joint and severally liable Respondents in this matter. I am, therefore, of the opinion that in addition to the Drexlers and their corporations, Mr. Pickett should also be jointly and severally liable for the penalty proposed to be assessed herein as to the Rathdrum facility.

ORDER³

Pursuant to the Solid Waste Disposal Act, as amended, Section 3008, 42 U.S.C. 6928, the following Order is entered against Respondents, Arroom, Inc., Drexler Enterprises, Inc., George W. Drexler and Terry Drexler:

³The Court has carefully read the novel arguments put forth by the Complainant as to the Court's power and authority to alter the original Order issued by the Agency as part of its Complaint. (See pp. 48-51 of Complainant's initial post-hearing brief.) The Agency's argument, in this regard suggests that an ALJ has no authority to alter the Compliance Order associated with a Complaint issued by the Agency on the theory that such Orders are "executive commands and do not constitute adjudicative authority by E.P.A." The Complainant further points out that 40 C.F.R. Part 22 does not address the Compliance Order or control the disposition of such an Order in proceedings such as this. These arguments are rejected.

40 C.F.R. § 22.27 clearly directs the ALJ to issue an Initial Decision which contains, inter alia, a civil penalty and a proposed Final Order. Common sense dictates that a Compliance Order must be consistent with the factual and legal findings of the Court. If portions of the Compliant are dismissed or no violation is found, it would be absurd to leave intact those portions of the Compliance Order dealing with those issues. Conversely, additional facts developed at the Hearing may require some supplement to the original compliance order to assure that all violations and environmental hazards are addressed and remedied.

The Court perceives the fine hand of the innovative and skillful legal staff in Region X in this matter. Although novel and inventive legal propositions are encouraged by the Court, in this instance, they are not accepted.

1. (a) As to the Tacoma site, a civil penalty of \$3,000.00 is assessed against Respondents for violations of the Solid Waste Disposal Act found herein.

(b) As to the Rathdrum site, a civil penalty of \$4,500.00 is assessed against Respondents and Alan Pickett for violations of the Solid Waste Disposal Act found herein.

(c) Payment of the penalty assessed herein shall be made by forwarding a cashier's check or certified check payable to the United States of America, and mailed to:

EPA - Region X
(Regional Hearing Clerk)
Post Office Box 360903M
Pittsburgh, PA 15251

in the full amount within sixty (60) days after service of the Final Order upon Respondent, unless upon application by Respondent prior thereto, the Regional Administrator approves a delayed payment schedule, or an installment payment plan with interest.⁴

Order as to the Tacoma Site

2. Respondents or companies owned and/or operated by the Respondents shall not accept at this facility any hazardous waste for disposal. Furthermore, Respondents and/or said companies shall not accept at this facility any hazardous waste for storage or treatment unless


⁴Unless an appeal is taken pursuant to 40 C.F.R. § 22.30, or the Administrator elects to review this Decision on his own motion, the Decision shall become the Final Order of the Administrator. See 40 C.F.R. § 22.27(c).

said storage or treatment precludes the use, reuse, recycling or reclamation of the hazardous waste and such hazardous waste is neither a sludge nor a hazardous waste listed in Subpart D of 40 C.F.R. 261 until such time as a permit is issued by EPA pursuant to 40 C.F.R. 122 (redefined on April 1, 1983 as 40 C.F.R. 270) and 124 for this facility.

3. Respondents shall submit an approvable closure plan for this facility in accordance with 40 C.F.R. 265, Subpart G within thirty (30) days of receipt of this Order. Closure shall commence upon EPA approval of the plan and shall be accomplished in accordance with 40 C.F.R. 265, Subparts G and J as expeditiously as possible but in no event later than one hundred and eighty (180) days from EPA's approval.

Order as to the Rathdrum Site

4. Inasmuch as the above-named Respondents are currently barred from any access to this facility and further since the Agency has entered into a separate agreement with the landowner, Mr. Bingham, as to the future disposition of this site, no Compliance Order as to this facility will be issued by the undersigned.


Thomas B. Yost
Administrative Law Judge

DATED: October 21, 1985